

THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS
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ARIZONA SUPREME COURT

In the matter of:)	Supreme Court N. R-07-0016
)	
PETITION TO AMEND RULE 122,)	COMMENT OF THE REPORTERS
RULES OF THE SUPREME COURT)	COMMITTEE FOR FREEDOM
OF ARIZONA)	OF THE PRESS, IN SUPPORT OF
)	THE PETITION TO AMEND
)	RULE 122
)	
_____)	

The Reporters Committee submits these comments in response to the Court's invitation to comment on the proposed revisions to Rule 122 of the Rules of the Supreme Court of Arizona. We thank the Court for this opportunity to comment and take the occasion to strongly urge the state to accept KPNX's proposed amendments regarding camera coverage of courtroom proceedings.

General Interest of Signatory

The Reporters Committee for Freedom of the Press is a voluntary, unincorporated association of reporters and editors working to defend the First Amendment rights and freedom of information interests of the news media. The Reporters Committee has provided representation, guidance and research in First Amendment and Freedom of Information Act litigation since 1970, and frequently files *amicus curiae* briefs in significant media law cases.

The Reporters Committee also serves as a First Amendment clearinghouse, monitoring and compiling information about significant legal and statutory developments affecting journalists and the public's right to know, and produces several publications to inform journalists and lawyers about media law issues, including a quarterly magazine, a bi-weekly newsletter, and a web log, which is updated several times daily.

The Reporters Committee also operates a hotline to assist journalists with legal problems as they arise in their work. Often, these legal defense requests come from journalists who seek access to court records and information. This contact with reporters, editors and media lawyers around the country drives home the importance that court access plays in the everyday performance of journalism.

As both a news organization and an advocate of free press issues, the Reporters Committee has a strong interest in the policies governing the rights of reporters to record courtroom proceedings. It is through this dual role that the Reporters Committee can offer a unique perspective on the need for camera access to the judicial system.

Comments

- I. THE COURT SHOULD ACCEPT KPNX'S PROPOSED AMENDMENT, THEREBY ENHANCING PUBLIC ACCESS TO THE JUDICIARY WHILE PROTECTING ITS OWN INTERESTS THROUGH WELL-CRAFTED PROCEDURAL SAFEGUARDS REGARDING CAMERAS IN THE COURTROOMS.

The U.S. Supreme Court has long recognized significant value in allowing public access to courtroom proceedings, offering benefits both to the judicial system and to the public. Allowing camera access is simply an enhanced, more meaningful way of allowing public access to courts. By accepting KPNX's proposed amendments, the Arizona Supreme Court can go a long way to ensuring the continued benefits of that

public access while appropriately protecting the interests of judges, parties, witnesses and juries alike.

Public access to the courtroom proceedings has long benefited the judicial system as well as the public as a whole. Notably, the U.S. Supreme Court has recognized that the right of public access “plays a particularly significant role in the functioning of the judicial process and the government as a whole.” *Globe Newspaper Co. v. Superior Court* 457 U.S. 596, 606 (1982). The Court noted that increased public access to judicial proceedings “enhances the quality and safeguards the integrity of the factfinding process,” *Id.*, by discouraging perjury, the misconduct of participants, and decisions based on secret bias or partiality. *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 569 (1980). Moreover, the Court has found that public access “heighten[s] public respect for the judicial process,” and allows the public to “participate in and serve as a check upon the judicial process – an essential component in the structure of self-government.” *Globe Newspaper Co.*, 457 U.S. at 606.

Although they likely did not intend to, Judges Randolph A. Bartlett and Monica Stauffer illustrate the exact need for public access and oversight for judicial proceedings in their May 19, 2008 Comment. In their comment, the judges, arguing against allowing camera access, worried that “[s]ome of our non-lawyer JPs and Magistrates may not truly reflect the highest levels of professionalism or knowledge, which would reflect poorly upon the judiciary as a whole.” The concern that the judge identify highlights the exact benefits of public access that the Supreme Court has already identified. Ideally, public scrutiny would hopefully encourage unprofessional, uninformed magistrates – individuals

who play an integral role in the judicial process – to improve their behavior and increase their understanding of the legal issues they deal with on a day-to-day basis.

The public likewise benefits greatly from increased access to the judicial process. The Court noted that there is a “therapeutic value” to the community by allowing it to reconcile conflicting emotions about high profile cases. *Richmond Newspapers*, 448 U.S. at 570. Additionally, public access reassures the public that its government systems are working properly and correctly, and enhances public knowledge and understanding of the court system. *Id.*

In more recent times, those benefits have relied greatly on the media serving as a surrogate for the public at courtroom proceedings. The U.S. Supreme Court recognized as much, noting that most people acquire information about the court system “chiefly through the print and electronic media.” *Id.* Allowing cameras to take the courtroom to the people, either in part or in whole, allows the media to best-serve as public surrogates by providing unfiltered, unfettered, uncorrupted access to the judicial system. Viewing courtrooms through the lens of a camera allows the public to get as close to the courtroom as possible and directly observe the administration of justice.

Importantly, these benefits come with few strings attached. Technological advances have eliminated the concerns that cameras will create a physical disturbance in the courtroom. Cameras can now operate in near silence without potentially distracting bright lights and can easily fade into the background in a courtroom setting. In fact, when addressing the use of cameras in courtrooms, numerous states have conducted studies all reaching the same conclusion: cameras cause very limited, if any, physical distractions. *In re Petition of WMUR Channel 9*, 813 A.2d 455, 459 (N.H. 2002)

("[a]dvances in modern technology, however, have eliminated any basis for presuming that cameras are inherently intrusive. In fact, the increasingly sophisticated technology available to the broadcast and print media today allows court proceedings to be photographed and recorded in a dignified, unobtrusive manner, which allows the presiding justice to fairly and impartially conduct court proceedings"). Moreover, those same studies indicate that cameras in the courtroom ultimately affect participants in a judicial proceeding in the same way as a reporter standing outside the courtroom asking questions after a proceeding concludes. *Id.* at 460.

Nevertheless, many of the Comments already filed in this docket raise concerns about the effects that cameras might have on courtroom participants. Fortunately, the proposed amendments, as augmented by the Maricopa County Superior Court in its April 8, 2008 Comment, provides basic procedural safeguards to protect the legitimate interests in sometimes shielding a particular courtroom proceeding from the lens of a camera. Unlike New Hampshire, Massachusetts, Washington, Tennessee, Florida, Mississippi and New York who have adopted rules or case law that presumptively allows for camera coverage, the KPNX amendments merely provide basic procedural safeguards for judges to follow when considering allowing cameras in the courtroom.

As KPNX outlined in its petition, Arizona courts are applying Rule 122 in a manner that is, at best, inconsistent. Ultimately, those safeguards would go a long way to providing more consistent, better-informed decisions about when and how to allow camera coverage of the judicial system. At heart, KPNX's amendments would only require that trial courts: make specific findings denying a request for camera coverage; consider reasonable alternatives to blanket closure of hearings; conduct hearings upon

objections to requests for camera access; and permit appellate review of decisions regarding camera coverage.

Contrary to the reading that many commenters have already offered, the proposed changes will continue to provide judges great flexibility in crafting a plan that best balances the competing public interests in access to courts and the right to a fair trial. Indeed, the rule explicitly preserves the strong and important protections already in place under the current formulation of the rule, requiring the judge to consider a multitude of factors including the fair trial rights of the parties, the privacy of parties and witnesses, the safety and well-being of parties, witnesses and jurors, the risk of distraction, the adequacy of the courtroom's physical facilities, and any other factor that may influence the fair administration of justice. On this point, the amendments only require two additional steps: that the trial court make these findings after a prompt hearing on the issue and that the trial court make those considerations on public record. These proposed changes only stand to ensure that the trial court makes well-informed decisions after hearing all interested parties and to shed light on the trial court's reasoning in denying full access to courtroom proceedings.

Moreover, requiring these findings merely ensures that Arizona courts follow the important demands of the Supreme Court in restricting camera access to the courtroom. In *Chandler v. Florida*, the Court rejected the notion that cameras *per se* create prejudice and instead demanded a specific showing of prejudice to justify the removal of cameras from the courtroom. In that case, the Court dismissed the claim that the cameras unduly prejudiced the specific criminal trial before them because there was "no evidence that any participant in this case was affected by the presence of cameras" and therefore "no

showing that the trial was compromised by television coverage.” 449 U.S. 560, 582 (1981). By demanding basic evidentiary findings, the safeguards proposed by KPNX set forth guidelines for a judge to consider the evidence the Supreme Court referred to in *Chandler*.

The proposed amendments also more suitably balances the public’s right of access by encouraging the trial court to consider alternative measures that might safeguard the public’s access rights. Often, such as when there may be only one witness that demands the absence of cameras, blanket closures exclude the public from parts of the proceeding that it otherwise should have full access to. Similarly, the amendments demand that trial courts consider alternative means of protection outside of restricting public access, such as obscuring the identity of trial participants. Given the benefits that public access lends the judicial system, it is imperative that restrictions on access only go so far as the situation demands and no further.

Finally, the proposed amendments afford appellate review of the trial courts decision to deny requests to record courtroom proceedings. This additional safeguard provides accountability for such decisions and again provides incentives for trial courts to carefully consider the interests of the public in maintaining access to the courts.

Conclusion

We thank you for the opportunity to provide comments on this important matter. The Reporters Committee strongly urges Arizona to advance its long-standing tradition of open government and to increase public understanding of the judiciary, by requiring trial courts to make specific findings and exploring alternative solutions when closing

courtrooms and to allow for appellate review of those decisions. As such, we urge the Court to adopt KPNX's proposed amendments to Rule 122.

Respectfully Submitted,

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